

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION**

JACOB SMITH,

Petitioner,

vs.

JAMES SALMONSEN; ATTORNEY  
GENERAL OF THE STATE OF  
MONTANA,

Respondents.

Cause No. CV 21-40-H-SEH

**ORDER**

On May 5, 2021, Petitioner Jacob Smith ("Smith") filed a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody.<sup>1</sup> On July 22, 2021, he was ordered to show cause as to why his petition should not be dismissed as time-barred and procedurally defaulted.<sup>2</sup> Three extensions of time in which to respond have been granted.<sup>3</sup> On October 22, 2021, Smith was advised that he had until 4:45 p.m. October 29, 2021, to file his response or his case would be dismissed.<sup>4</sup> Smith has not filed a response.

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<sup>1</sup> Doc. 1.

<sup>2</sup> Doc. 4.

<sup>3</sup> See Docs. 6, 8 & 10.

<sup>4</sup> Doc. 10 at 2.

Smith has failed to comply with the Court's Order.<sup>5</sup> Relevant factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions," have been weighed.<sup>6</sup> None warrant application here. The case is dismissed.

No basis to encourage further proceedings exists.<sup>7</sup> A certificate of appealability is denied.<sup>8</sup>

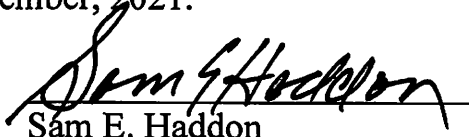
**ORDERED:**

1. Smith's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody<sup>9</sup> is DISMISSED.

2. The Clerk of Court is directed to enter, by separate document, a judgment in favor of Respondents and against Petitioner.

3. A certificate of appealability is DENIED.

DATED this 5<sup>th</sup> day of November, 2021.

  
Sam E. Haddon  
United States District Judge

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<sup>5</sup> See Fed. R. Civ. P. 41(b); see also *Link v. Wabash Railroad Co.*, 370 U.S. 626, 629–30 (1962); see also *Pagtalunan v. Galaza*, 291 F. 3d 639, 641–45 (9th Cir. 2002).

<sup>6</sup> *Carey v. King*, 856 F. 2d 1439, 1440 (9th Cir. 1988); see also *Pagtalunan*, 291 F. 3d 642.

<sup>7</sup> *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

<sup>8</sup> 28 U.S.C. § 2253(c)(2); Rule 11(a), Rules governing § 2254 Proceedings.

<sup>9</sup> Doc. 1.